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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,981	04/17/2006	Vincent Jemelin	19724	8604
272 7590 03/02/2011 SCULLY, SCOTT, MURPHY & PRESSER, P.C. 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			EXAMINER AUGHENBAUGH, WALTER	
			ART UNIT 1782	PAPER NUMBER
			MAIL DATE 03/02/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,981

Applicant(s)

JEMELIN, VINCENT

Examiner

WALTER B. AUGHENBAUGH

Art Unit

1782

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10, 11 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10, 11, 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action in the Request For Pre-Appeal Conference filed October 14, 2010 is persuasive and, therefore, the finality of that action is withdrawn.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10, 11 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 10, the recitation “with a fluid material preserving the dental implant” renders the scope of subject matter Applicant intends to recite indefinite because it cannot be ascertained whether or not Applicant intends to positively recite the fluid material. The dental implant is not positively recited because of the “for holding a dental implant...” recitation, but it is not clear if the “with a fluid material preserving the dental implant” recitation is intended to refer to the “package”, or to the “dental implant”. Clarification and/or correction is required.

Claims 11 and 18 are rejected for the same reason as claim 10 since claims 11 and 18 depend upon claim 10.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kishimoto et al. (JP 10-181735) in view of Shinozaki et al. (USPN 6,793,101). JP 10-181735 is cited in IDS and a machine translation is included with this Office Action.

In regard to claim 10, Kishimoto et al. teach a capsule (the container) that consists of cyclic olefin copolymer. See, for example, paragraphs 0015, 0016 and 0018. Eventhough the capsule (the container) is taught as having two layers, the capsule (the container) consists of cyclic olefin copolymer because both layers are cyclic olefin copolymer layers. See, for example, paragraphs 0015, 0016 and 0018 (paragraph 0015 states "...by carrying out orientation relaxation of the cyclic olefin system copolymer of the thin layer of an outside surface", indicating that the outer, thin layer is a cyclic olefin system copolymer layer). The thicker, inner

layer is a cyclic olefin copolymer layer because Kishimoto et al. disclose that the “container 1 is formed by the stretch blow molding of the cyclic olefin system copolymer” (paragraph 0016).

In regard to the fluid loss per year property that is not specifically taught by Kishimoto et al., this characteristic would be inherent in the composition: the composition taught by Kishimoto et al. corresponds to the claimed composition, so the skilled artisan would expect the inherent physical characteristics to be the same, as well, since there is nothing otherwise recited that would lead to a different result. Also note that

[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art’s functioning, does not render the old composition patentably new to the discoverer.” Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. In re Best, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977)...

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Kishimoto et al. teach that the container includes a cap (paragraph 0016).

While Kishimoto et al. does not specifically teach the material of the cap, Shinozaki et al. teach a bottle comprising a bottle cap sealing unit comprising two separate components (inner cap 2 and outer cap 1) that may comprise a polypropylene resin or a low density polyethylene resin (col. 7, lines 19-21). One of ordinary skill in the art would have recognized to have looked to Shinozaki et al. for a teaching of a particular known material for use as the cap of the container of Kishimoto et al. since both Kishimoto et al. and Shinozaki et al. both pertain to polymeric containers having caps (and since Kishimoto et al. generally teach containers having caps, and do not require a particular structure for the container or cap of the container). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have

used low density polyethylene as the material of the cap of the container of Kishimoto et al. since low density polyethylene is a known material for producing closures for containers such as caps as taught by Shinozaki et al.

In further regard to claim 10, examiner notes that the recitation regarding the amount of fluid loss per year applies to the cyclic olefin copolymer (or the capsule that consists of the cyclic olefin copolymer), and not to the package as a whole (based on Applicant's claim language, the package includes the cap, the capsule does not include the cap).

In regard to claim 11, Kishimoto et al. and Shinozaki et al. teach the package as discussed above.

While Kishimoto et al. fail to teach that the package further includes a barrier sealing the capsule, Shinozaki et al. teach a barrier (sealing lid 12 which breaks at breaking groove 14 when the cap is opened) that seals the capsule (that is, the container body) (see, for example, col. 7, lines 36-39 and Fig. 1 and 2). Therefore, since Kishimoto et al. generally teach containers having caps, and do not require a particular structure for the container or cap of the container, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a cap sealing unit including the inner cap having the sealing lid 12 as the cap of the container taught by Kishimoto et al. and Shinozaki et al. in regard to claim 10 when such a structure is desired, depending upon the particular desired end use and characteristics of the container, since the closure structure taught by Shinozaki et al. is a known structure for tamperproof bottles (col. 1, lines 5-11).

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 7:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /

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01/31/11